Court of the United States for said district a libel for the seizure and condemnation of 4 cases of sweet chocolate at Reno, Nev., alleging that the article had been shipped by the James Force Co., San Francisco, Calif., on or about October 5, 1922, and transported from the State of California into the State of Nevada, and charging adulteration and misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part: "Guittard's Sweet Eagle Chocolate Standard Quality * * * San Francisco, Cal. Net Contents 16 Ounces."

Adulteration of the article was alleged in the libel for the reason that a substance containing excessive shells had been mixed and packed with and substituted wholly or in part for the said article.

Misbranding was alleged in substance for the reason that the statement appearing on the said label, "Guittard's Sweet Eagle Chocolate Standard Quality," was false and misleading and deceived and misled the purchaser. Misbranding was alleged for the further reason that the article was food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On February 23, 1923, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be delivered to a charitable institution.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

11326. Misbranding and alleged adulteration of vinegar. U. S. v. 65 Barrels of Vinegar. Tried to the court. Judgment for Government on misbranding charge, for claimant on adulteration charge. Decree of condemnation and forfeiture entered. Product released under bond. (F. & D. No. 12240. I. S. No. 11815–r. S. No. C–1823.)

On March 10, 1920, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, and thereafter an amended libel, praying the seizure and condemnation of 65 barrels of vinegar, remaining unsold in the original unbroken packages at Milwaukee, Wis., alleging that the article had been shipped by the Douglas Packing Co., Rochester, N. Y., in part on or about May 8 and in part on or about September 16, 1919, and transported from the State of New York into the State of Wisconsin, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Sunbright Brand Apple Cider Vinegar Made From Selected Apples Reduced To 4% Douglas Packing Co. Guaranteed To Comply With All Pure Food Laws."

Adulteration of the article was alleged in the libel as amended for the reason that the said article was made from evaporated or dried apple products and had been mixed and packed with and substituted wholly or in part for cider vinegar, which the said article purported to be.

Misbranding was alleged in substance for the reason that the labels upon the casks or barrels containing the article bore the following statements regarding the said article, "Apple Cider Vinegar Made From Selected Apples * * * Guaranteed To Comply With All Pure Food Laws," which statements were false and misleading and deceived and misled the purchaser in that they created the impression that the said article was pure cider vinegar, whereas, in truth and in fact, it was not pure cider vinegar but was vinegar made from evaporated and dried apple products. Misbranding was alleged for the further reason that the article was an imitation of and was offered for sale under the distinctive name of cider vinegar.

On December 7, 1921, the case came on for trial before the court on an agreed stipulation of facts between the Government and the claimant, the Douglas Packing Co., Rochester, N. Y. After the submission of evidence and arguments by counsel the court, on December 8, 1921, handed down the following decision (Geiger, *D. J.*):

"I may say preliminarily that the jurisdiction exercised by the Federal Government under the Pure Food Act, of course, arises out of the grant of power to Congress to regulate interstate commerce, and it may be that in the enforcement of the act the Federal courts need not go to the extent that the State sovereignties go in enforcing or interpreting pure food laws, but I have always felt that the law, after all, was one, notwithstanding the basis of the power, which aimed at just what the title discloses. It certainly has something to do with pure foods and correct labeling. The facts in this case, so far as they are relevant, are, in my judgment, not open to serious controversy. As I intimated during the discussion, and I say this freely, I was

impressed, upon the conclusion of the opening statements made by counsel for the respective parties, with the idea that if the facts were stipulated as subsequently disclosed, it was a very nice question whether the case could not have been disposed of upon the stipulation, plus matters which are within judicial cognizance. Now, I do not mean by that that the case could have been disposed of because the particular judge thought he knew something about the art pertaining to cider and vinegar, because, if that were true in some cases, it would not be claimed here. But, in the enforcement of this law, there comes a time when, in administering executively or judicially that part of it dealing with labels, with branding, with the holding out of goods, some executive or judicial officer must exercise the power of definition; and that brings with it the query: To what may recourse be had as executive or judicial aid, administrative aid, in the exercise of that power of definition? Now, passing from that to the means afforded in this case for the answer, I can only say that the means were right at hand here through the lips and tongues of those who could speak, in virtue of their experience, to that subject.

"The Government challenges the right of the claimant and respondent to use in interstate commerce upon the product made, as it says it is made, the label, 'Apple Cider Vinegar,' and that of course brings with it the query: What is vinegar, what is cider vinegar, what is apple cider vinegar? And notwithstanding all that is said here—and that was urged rather earnestly—respecting the attitude of the executive and the court to countenance growth commercially, and all that sort of thing, the testimony in this case, it seems to me, affords the very strongest support to the notion that this case, to quite an extent, could have been disposed of by taking into consideration the matters as matters of judicial cognizance. Nobody will doubt that in the progress of the arts, as they enter into manufacturing and commerce, things are done which are at variance with the manner in which they were originally done. It may be conceded that a method has been developed for making cider, which, being put out as 'apple cider' successfully fools. Now, coming directly to this matter of definition, how did the idea of apple cider vinegar ever arise? There must be a reason for what has rather conclusively appeared in this case, that it is universally regarded as a mighty good name for something. Men in manufacturing and commerce can, upon their choice, select names which will be representative of ingredients, or which will be purely arbitrary names—trade names. But this is true, the term 'apple cider vinegar' grew out of habits of people in making vinegar. It was a homely designation of processes and products made originally and to some extent probably still made in a homely way, but in a way—and this is the point—that gave to the people making it and getting it an absolutely satisfactory consciousness as to the merit of what they had made and made in the way that they made it. That is why people ask for 'apple cider vinegar.' They have that consciousness. That is why jobbers are anxious to sell what they believe may truthfully be called 'apple cider vinegar.' That is why manufacturers are glad and anxious to put as apple cider vinegar the things they put out. Now, is the law and its tribunal mistaken in exercising this power of definition, especially when it is fortified in the manner that it has been in this case, in saying that is the legal definition of apple cider vinegar? That is what this case comes down to. And I have felt throughout the case that sight should not be lost of a very good test to which subject any situation of labeling, any situation of holding out something to be something, and that test is this—, why object to a full disclosure of the facts—is there any doubt, whether we take the term 'apple cider vinegar' or the more restricted term 'apple cider,' the one referring, of course, to the one thing and the other to the other, that these initially and accurately reflect a conception on the part of the public respecting the identity of the thing, its identity being in mind not disconnectedly from the manner in which it was made? Is there any doubt at all but that, if the facts were stated in connection with the two articles, the public would act upon their native conception not only as to what a thing is but certainly upon their conception as to what they want? And as I indicated this morning, this law and no pure food law, so far as it deals with labeling is concerned, is expected to endow judicial or executive officials with the necessity of trying to extract and explain as to why the public act that way. The fact is to be found from their attitude, from their conduct, from their conception, as the court may well glean it from the testimony of witnesses.

"Now, to carry that a little bit further, take the testimony of men who have come here into court, representatives of brokerage interests in Chicago, representatives of large wholesale grocery interests in Chicago and Milwaukee, and without the slightest hesitation, without equivocation, without an attempt at the slightest limitation upon the meaning of the word, they aim to speak out of their comprehensive observation and experience upon this vital matter as to what is meant by the term 'apple cider vinegar,' men who would be interested very much, if they could, to have the product which is here in court square up with that definition. Most of them undoubtedly have handled this sort of a product, labeled in this way—maybe all of them have some in stock now—and yet they come here with the idea that the court may thereby be enabled to discharge the function committed to its discharge, the duty committed to it of determining whether this is a true label; and of course they approach it from the angle suggested by the question: What does the public understand by those terms? And as I said a moment ago, without any hesitation they all say, 'Why, it means cider vinegar made from apple cider,' comprehending the native juices of the fresh apple. And I shall not forego the opportunity to refer to the single witness who stood out in rather bold relief against that entire concurrence on the part of the Government's testimony. That is the witness, Mr. Somebody (McCord) from Des Moines, Iowa, a manufacturer. The same question being put to him, he seemed to have a perfectly clear appreciation of the possibilities of dividing his responsibility between the two views. He seemed to think at first that the question might be answered from the manufacturer's standpoint, and I assume that he wanted to answer it his way there. He suggested that it depended on whether it was to be answered from the jobber's or from the consumer's standpoint and finally said that there seemed to be no particular conception as to the meaning. That answer was afterwards changed, and when the court interrogated him upon the more limited question as to his conception of the meaning of the term 'apple cider,' why, he was content to leave the stand saying that in his own mind and in the minds of the people of Iowa, one was just as good as the other, that they had never seen fit to make any distinction. Now, with due respect to that witness, he appreciated the ground that he, as a manufacturer, was on. It cuts no figure that, as he says, both are permitted in Iowa. It cuts no figure in this case that the various representatives of the Department of Agriculture have gone first one way and then another way, if that is true, or have made all sorts of tracks on this proposition. That is not relevant to the question that is here before us, the very narrow question respecting the truth of this label.

"Now, it would be rather odd if, upon the testimony as it is here presented, the court should incline to or adopt the conclusion that because there is a suggestion here of chemical identity, that because there is a taking of apples which have been dried or dehydrated and subsequently water is added and some sort of a mixture is withdrawn, that that after all, because it is apple juice, is cider in the sense in which this entire trade uses that term. It is a question of the interpretation of the statute respecting truth of labels, which advances, as it did in this case, to the question of determining, as a matter of law, what is true and what is not true in point of definition. Now, grant that the claimant here is making a good vinegar, for some reason or other there is not a willingness that the public should be told, in the same detail in which for ages the public has had a conception of the facts respecting apple cider vinegar—the public should not be told in that same detail the facts respecting this particular so-called apple cider vinegar. Now, of course manufacturers know, every representative of the great jobbing interests that was here on the stand knows, and every retail grocer knows that as between the two possibilities, assuming that the one kind is to compete against the other, disclosure is forbidden. Assuming that the two are to be put up together, it would not do to tell the public: 'Why, you have got the old-fashioned notion about apples and apple cider; we have a new scheme here now whereby the water is withdrawn and the dehydrated apples and chops and leavings are passed into catacombs and allowed to remain in the mummified of [or] somnolescent state until withdrawn, whereupon we are going to get something that is just as good.' It would not do to tell it. That answers the question in this case; and the law aims not that there must be that degree of disclosure, but that the disclosure or claim on a label, whatever it be, be truthful. The law does not say you must tell all about this thing. So far as this case is concerned the law does say: 'You cannot use a label which leads the public to think that there is something here which has not

been done and is not here.' And that is the function of this court in this case to declare, and I do so declare, that this shipment of vinegar was misbranded within the meaning of the law. I indicated that upon the issue of adulteration the court is not required to find adulteration—I don't think it is supported by the evidence here—and that count will be dismissed, and upon the other count there will be a decree in the ordinary form of condemnation."

On December 26, 1922, the court having found that the allegations as to the misbranding of the product were true and correct but that the allegations as to the adulteration were unsupported, judgment was entered declaring the product to be misbranded and ordering its condemnation and forfeiture. It was further ordered by the court that the said product be released to the claimant, the Douglas Packing Co., upon payment of the costs of the proceedings and the execution of a bond in the sum of $500, in conformity with section 10 of the act, conditioned in part that it be relabeled under the supervision of this department.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

11327. Adulteration and misbranding of cottonseed meal. U. S. v. 400 Sacks of Cottonseed Meal. Decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 17208. I. S. No. 2593-v. S. No. E-4296.)

On January 29, 1923, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 400 sacks of cottonseed meal, remaining in the original unbroken packages at Mount Joy, Pa., and vicinity, consigned by the Eastern Cotton Oil Co., Hertford, N. C., alleging that the article had been shipped from Hertford, N. C., on or about January 10, 1923, and transported from the State of North Carolina into the State of Pennsylvania, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Perfection Cotton Seed Meal 100 Lbs. Net Manufactured By Eastern Cotton Oil Company Hertford, North Carolina. Guarantee Protein not less than 41.00% Equivalent to Ammonia 8.00% * * * Ingredients—made from Upland Cotton Seed."

Adulteration of the article was alleged in the libel for the reason that a substance low in protein, ammonia, had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength and had been substituted wholly or in part for the said article.

Misbranding was alleged in substance for the reason that the labels bore the following statements regarding the article and the ingredients and substances contained therein, "Perfection Cotton Seed Meal * * * Guarantee Protein not less than 41.00% Equivalent to Ammonia 8.00% Ingredients—made from Upland Cotton Seed," which statements were false and misleading in that the said article did not in fact contain 41 per cent of protein, equivalent to 8 per cent of ammonia. Misbranding was alleged for the further reason that the article was an imitation of and offered for sale under the distinctive name of another article.

On February 6, 1923, E. H. Zercher, Mount Joy, Pa., having entered an appearance as claimant for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product be released to the said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of $1,000, in conformity with section 10 of the act, conditioned in part that the said product be relabeled under the supervision of this department.

C. W. PUGSLEY, *Acting Secretary of Agriculture.*

11328. Adulteration and misbranding of frozen eggs. U. S. v. 92 Cases of Frozen Eggs. Consent decree of condemnation and forfeiture. Product released under bond. (F. & D. No. 17273. I. S. No. 4177-v. S. No. C-3882.)

On or about February 8, 1923, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying the seizure and condemnation of 92 cases of frozen eggs, remaining unsold in the original unbroken packages at Chicago, Ill., alleging that the article had been shipped by W. L. Ogden & Co., from Sioux City, Iowa, January 17, 1923, and transported from the State of Iowa into the State of Illinois and charging adulteration and misbranding in violation of the Food and Drugs